

INTERNET  
FORM NLRB-502  
(3-98)UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
PETITION

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case No.

04-RC-140381

Date Filed

11/6/14

INSTRUCTIONS: Submit an original and 4 copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located. If more space is required for any one item, attach additional sheets, numbering them accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
- ☒ RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) ☐ In unit not previously certified. ☐ In unit previously certified in Case No. \_\_\_\_\_
- ☐ AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. \_\_\_\_\_
- Attach statement describing the specific amendment sought.

2. Name of Employer  
Fed Cap Rehabilitation Services

Employer Representative to contact  
Don Brown / Site Manager

Telephone Number  
609 485 5922

3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)  
William Hughes Technical Center, Atlantic City Airport, EHT NJ 08234

Telecopier Number (Fax)  
609 485 6507

4a. Type of Establishment (Factory, mine, wholesaler, etc.)  
Government Offices

4b. Identify principal product or service  
Facilities service / operation and maintenance

5. Unit involved (In UC petition, describe present bargaining unit and attached description of proposed clarification.)

Included  
All White Collar employees including the Work Control Manager, Health and Safety Specialist, Accountant, QC Coordinator, Secretary's and IDIQ Coordinator

Excluded  
The Project Manager and Guards as defined by the act

6a. Number of Employees in Unit:  
Present 6  
Proposed (By UC/AC)

6b. Is this petition supported by 30% or more of the employees in the unit? ☒ Yes ☐ No  
\*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable.)

7a. ☐ Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about (Date) \_\_\_\_\_ (If no reply received, so state.)

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If none, so state.)

Affiliation

Address, Telephone No. and Telecopier No. (Fax)

Date of Recognition or Certification

9. Expiration Date of Current Contract. If any (Month, Day, Year)

10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day, and Year)

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes \_\_\_\_\_ No ☒

11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of (Insert Name) \_\_\_\_\_, a labor organization, of (Insert Address) \_\_\_\_\_ Since (Month, Day, Year) \_\_\_\_\_

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state.)

Name	Affiliation	Address	Date of Claim
none			Telecopier No. (Fax)

13. Full name of party filing petition (If labor organization, give full name, including local name and number)  
International Union Of Operating Engineers Local 68

14a. Address (street and number, city, state, and ZIP code)  
4425 Atlantic Ave Atlantic City NJ 08401

14b. Telephone No.  
(b) (6), (b) (7)(C) cell

14c. Telecopier No. (Fax)  
(b) (6), (b) (7)(C)

15. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when petition is filed by a labor organization)  
International Union of Operating Engineers

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)  
Patrick T Gilrane

Signature  
*Patrick T Gilrane* 11/4/14

Title (if any)  
Vice President / Business Representative

Address (street and number, city, state, and ZIP code)  
4425 Atlantic Ave Atlantic City NJ 08401

Telephone No. (b) (6), (b) (7)(C)

Telecopier No. (Fax) (b) (6), (b) (7)(C)

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**STIPULATED ELECTION AGREEMENT**

**Fedcap Rehabilitation Services, Inc.**

**Case 04-RC-140381**

The parties **AGREE AS FOLLOWS:**

**1. PROCEDURAL MATTERS.** The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

**2. COMMERCE.** The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

Fedcap Rehabilitation Services, Inc. is a New York private, non-profit vocational rehabilitation agency with headquarters at 211 West 14<sup>th</sup> Street, New York, NY. During the past 12-month period, the Employer has received gross revenues in excess of \$1,000,000 from its operations, and during the same period, it purchased materials and supplies valued in excess of \$50,000 from points located outside the State of New Jersey.

**3. LABOR ORGANIZATION.** The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

**4. ELECTION.** A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

**DATE:** Friday, December 12, 2014      **HOURS:** 12:00 p.m. to 12:30 p.m.

**PLACE:** In the break room in Building 301 at the William Hughes Technical Center, Atlantic City International Airport, New Jersey.

If the election is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

**5. UNIT AND ELIGIBLE VOTERS.** There will be two voting groups in the election.

**VOTING GROUP - UNIT A (PROFESSIONAL UNIT):**

Included: All full-time and regular part-time Accountants employed by the Employer to work at the William Hughes Technical Center, Atlantic City International Airport, New Jersey.

Excluded: All other employees, Health and Safety Specialists, Quality Control Coordinators, Secretaries, IDIQ Coordinators, guards and supervisors as defined in the National Labor Relations Act.

### **VOTING GROUP - UNIT B (NON-PROFESSIONAL UNIT):**

Included: All full-time and regular part-time Health and Safety Specialists, Quality Control Coordinators, Secretaries, and IDIQ Coordinators employed by the Employer to work at the William Hughes Technical Center, Atlantic City International Airport, New Jersey.

Excluded: All other employees, Accountants, guards and supervisors as defined in the National Labor Relations Act.

If a majority of the professional employees voting in Unit A vote "Yes" to the first question, indicating their desire to be included in a unit with non-professional employees, they will be so included, and their votes on the second question will be counted together with the votes of the non-professional employees in Unit B to decide the question concerning representation for the overall unit consisting of the employees in Units A and B. If on the other hand, a majority of the professional employees voting in Unit A do not vote "Yes" to the first question, their ballots will be counted separately to decide the question concerning representation in a separate Unit A.

Those eligible to vote in the election are employees in the above units who were employed during the **payroll period ending Friday, November 14, 2014**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

**6. ELECTION ELIGIBILITY LIST.** Within seven (7) days after the Regional Director has approved this Agreement, the Employer shall provide to the Regional Director an election eligibility list containing the full names and addresses of all eligible voters. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *North Macon Health Care Facility*, 315 NLRB 359 (1994).

**7. THE BALLOT.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of any voters or potential voters who only read a language other than English.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by International Union of Operating Engineers, Local 68?" The choices on the ballot will be "Yes" or "No".

**8. NOTICE OF ELECTION.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer will post copies of the Notice of Election in conspicuous places and usual posting places easily accessible to the voters at least three (3) full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in

order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

**9. ACCOMMODATIONS REQUIRED.** All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

**10. OBSERVERS.** Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

**11. TALLY OF BALLOTS.** Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

**12. POSTELECTION AND RUNOFF PROCEDURES.** All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

**Fedcap Rehabilitation Services, Inc.**  
\_\_\_\_\_  
(Employer)  
/s/ Steven D. Coons 11-19-14  
  
By \_\_\_\_\_  
(Name) (Date)

**International Union of Operating Engineers,  
Local 68**  
\_\_\_\_\_  
(Petitioner)  
/s/ Patrick T. Gilrane 11-19-14  
  
By \_\_\_\_\_  
(Name) (Date)

**Recommended:** /s/ David Rodriguez 11-19-14  
DAVID RODRIGUEZ, Attorney (Date)

**Date approved:** 11-19-14

/s/ Dennis P. Walsh

\_\_\_\_\_  
**Regional Director, Region 04**  
**National Labor Relations Board**

**VOTING UNIT**

**VOTING GROUP – UNIT A:** Those eligible to vote are: VOTING GROUP - UNIT A (PROFESSIONAL UNIT): Included: All full-time and regular part-time Accountants employed by the Employer to work at the William Hughes Technical Center, Atlantic City International Airport, New Jersey. Excluded: All other employees, Health and Safety Specialists, Quality Control Coordinators, Secretaries, IDIQ Coordinators, guards and supervisors as defined in the National Labor Relations Act. who were employed by the Employer during the payroll period ending November 14, 2014.

**VOTING GROUP – UNIT B:** Those eligible to vote are: VOTING GROUP - UNIT B (NON-PROFESSIONAL UNIT): Included: All full-time and regular part-time Health and Safety Specialists, Quality Control Coordinators, Secretaries, and IDIQ Coordinators employed by the Employer to work at the William Hughes Technical Center, Atlantic City International Airport, New Jersey. Excluded: All other employees, Accountants, guards and supervisors as defined in the National Labor Relations Act. who were employed by the Employer during the payroll period ending November 14, 2014.



**DATE, TIME AND PLACE OF ELECTION**

Friday, December 12, 2014	12:00 PM (Noon) to 12:30 PM	In the break room in Building 301 at the William Hughes Technical Center, Atlantic City International Airport, New Jersey.  William Huges Technical Center, Atlantic City Airport Bldg. 350, Egg Harbor Twp., NJ
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**EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.**

**IF YOU WISH, YOU MAY VOTE ON YOUR OWN TIME WHILE THE POLLS ARE OPEN.**

**\*\*\* SEE ATTACHMENT \*\*\***



	<p><b>UNITED STATES OF AMERICA</b> <b>National Labor Relations Board</b> 04-RC-140381 <b>OFFICIAL SECRET BALLOT</b> For certain employees of <b>FED CAP REHABILITATION SERVICES</b></p>	
<p>Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining?</p>		
<p><b>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</b></p>		
<p><b>YES</b></p> <div></div>		<p><b>NO</b></p> <div></div>
<p>Do you wish to be represented for purposes of collective bargaining by <b>OPERATING ENGINEERS LOCAL 68?</b></p>		
<p><b>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</b></p>		
<p><b>YES</b></p> <div></div>		<p><b>NO</b></p> <div></div>

**DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box.**  
**If you spoil this ballot, return it to the Board Agent for a new one.**

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

**ATTACHMENT**

If a majority of the professional employees voting in Unit A vote “Yes” to the first question, indicating their desire to be included in a unit with non-professional employees, they will be so included, and their votes on the second question will be counted together with the votes of the non-professional employees in Unit B to decide the question concerning representation for the overall unit consisting of the employees in Units A and B. If on the other hand, a majority of the professional employees voting in Unit A do not vote “Yes” to the first question, their ballots will be counted separately to decide the question concerning representation in a separate Unit A.

	<p><b>UNITED STATES OF AMERICA</b> <b>National Labor Relations Board</b> 04-RC-140381</p>	
<p><b>OFFICIAL SECRET BALLOT</b> For certain employees of <b>FED CAP REHABILITATION SERVICES</b></p>		
<p>Do you wish to be represented for purposes of collective bargaining by <b>OPERATING ENGINEERS LOCAL 68?</b></p>		
<p><b>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</b></p>		
<p><b>YES</b></p> <div><input type="checkbox"/></div>		<p><b>NO</b></p> <div><input type="checkbox"/></div>
<p><b>DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box.</b> <b>If you spoil this ballot, return it to the Board Agent for a new one.</b> <small>The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.</small></p>		



**VOTING UNIT 04-RC-140381**

**VOTING GROUP – UNIT B (NON-PROFESSIONAL UNIT)**

**EMPLOYEES ELIGIBLE TO VOTE:**

Those eligible to vote are: All full-time and regular part-time Health and Safety Specialists, Quality Control Coordinators, Secretaries, IDIQ Coordinators employed by the Employer to work at the William Hughes Technical Center, Atlantic City International Airport, New Jersey who were employed during the payroll period ending November 14, 2014.

**EMPLOYEES NOT ELIGIBLE TO VOTE:**

Those not eligible to vote are: All other employees, Accountants, guards and supervisors as defined in the National Labor Relations Act

If a majority of the professional employees voting in Unit A vote "Yes" to the first question, indicating their desire to be included in a unit with non-professional employees, they will be so included, and their votes on the second question will be counted together with the votes of the non-professional employees in Unit B to decide the question concerning representation for the overall unit consisting of the employees in Units A and B. If on the other hand, a majority of the professional employees voting in Unit A do not vote "Yes" to the first question, their ballots will be counted separately to decide the question concerning representation in a separate Unit A.

**DATE, TIME AND PLACE OF ELECTION**

Friday, December 12, 2014	12:00 PM (Noon) to 12:30 PM	In the break room in Building 301 at the William Hughes Technical Center, Atlantic City International Airport, New Jersey.
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**EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.  
IF YOU WISH, YOU MAY VOTE ON YOUR OWN TIME WHILE THE POLLS ARE OPEN.**



**UNITED STATES OF AMERICA**  
**National Labor Relations Board**  
04-RC-140381



**OFFICIAL SECRET BALLOT**

For certain employees of  
**FEDCAP REHABILITATION SERVICES, INC.**

Do you wish to be represented for purposes of collective bargaining by  
**INTERNATIONAL UNION OF OPERATING ENGINEERS,  
LOCAL 68?**

**MARK AN "X" IN THE SQUARE OF YOUR CHOICE**

**YES**

☐

**NO**

☐

**DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box.**

**If you spoil this ballot, return it to the Board Agent for a new one.**

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.



UNITED STATES OF AMERICA  
**NATIONAL LABOR RELATIONS BOARD**

Date Filed

Case No. 04-RC-140381 11-06-2014

Date Issued 12-12-2014

City Atlantic City, State NJ

Type of Election:  
(Check one:)

(If applicable check  
either or both:)

☒ Stipulation

☐ 8(b) (7)

☐ Board Direction

☐ Mail Ballot

☐ Consent Agreement

☐ RD Direction  
Incumbent Union (Code)

FEDCAP REHABILITATION SERVICES, INC.

Employer

and

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 68

Petitioner

VOTING UNIT "A"

**TALLY OF BALLOTS**

VOTING UNIT "A"

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots <sup>cast</sup>~~case~~ in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 1
2. Number of Void ballots 0
3. Number of Votes cast for Inclusion 1
4. Number of Votes cast for Exclusion 0
5. Number of Votes cast for ~~xxxxxxxxxxxxxxxx~~ 0
6. Number of Votes cast against participating labor organization(s) ~~xxxx~~ 0
7. Number of Valid votes counted (sum 3, 4, 5, and 6) 1
8. Number of challenged ballots 0
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 1
10. Challenges are not sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has ~~not~~ been cast for Inclusion

For the Regional Director [Signature]

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Employer [Signature]

For Petitioner [Signature]

For \_\_\_\_\_

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

Date Filed

Case No. 04-RC-140381

11-06-2014

Date Issued 12-12-2014

City Atlantic City

State NJ

Type of Election:  
(Check one:)

(If applicable check  
either or both:)

☒ Stipulation

☐ 8(b) (7)

☐ Board Direction

☐ Mail Ballot

☐ Consent Agreement

☐ RD Direction  
Incumbent Union (Code)

FEDCAP REHABILITATION SERVICES, INC.

Employer

and

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 68

Petitioner

VOTING UNIT "A" & "B" TALLY OF BALLOTS VOTING UNIT "A" & "B"

cast

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 5
2. Number of Void ballots 0
3. Number of Votes cast for Petitioner 5
- ~~4. Number of Votes cast for~~
- ~~5. Number of Votes cast for~~
6. Number of Votes cast against participating labor organization(s) 0
7. Number of Valid votes counted (sum 3, 4, 5, and 6) 5
8. Number of challenged ballots 0
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 5
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has ~~not~~ been cast for Petitioner

For the Regional Director

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Employer

For Petitioner

For

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 4**

**FEDCAP REHABILITATION SERVICES, INC.**

**Employer**

**and**

**Case 04-RC-140381**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 68**

**Petitioner**

**TYPE OF ELECTION: STIPULATED**

**CERTIFICATION OF REPRESENTATIVE**

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed. The professional employees did wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots have been cast for

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

INCLUDED: All full-time and regular part-time Accountants, Health and Safety Specialists, Quality Control Coordinators, Secretaries, and IDIQ Coordinators employed by the Employer to work at the William Hughes Technical Center, Atlantic City International Airport, New Jersey.

EXCLUDED: All other employees, guards and supervisors as defined in the National Labor Relations Act.



December 23, 2014

/s/ Harold A. Maier

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HAROLD A. MAIER  
Acting Regional Director, Region 4  
National Labor Relations Board

## NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,<sup>1</sup> an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

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<sup>1</sup> Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.